

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-629

MAINE PUBLIC UTILITIES COMMISSION
Investigation into Implementation of the
Federal Communication Commission's
Triennial Review Order

October 24, 2003

PROTECTIVE ORDER

The parties to this proceeding anticipate the need to exchange information considered to be competitively sensitive and/or proprietary in nature, in that the information requested may involve commercially sensitive and/or proprietary information on the Submitting Party's network configuration, pricing, market share, and wholesale and/or retail operations (Confidential Information). Such information is generally not disclosed publicly by the Parties, and if made available to competitors without restriction would harm a Party's competitive position in the marketplace.

In order to facilitate access to, and timely review of, such information, the following Protective Order shall apply in this proceeding:

1. A Party may designate certain confidential business information by clearly marking the information as Confidential Information and such Confidential Information shall be provided and used pursuant to the terms of this Protective Order.

2. All Confidential Information shall, unless removed from the coverage of the Protective Order as provided in paragraph 3 below, remain confidential. No persons provided access to any Confidential Information by reason of this Protective Order (the "Receiving Party") shall use such information for any purpose other than the purposes of preparation for and conduct of this

proceeding and then solely as contemplated herein. Every person provided access to Confidential Information shall use his or her best efforts to keep the Confidential Information secure and shall not disclose it or accord access to it to any other person not authorized by this Protective Order.

3. Any Party to this proceeding or the Commission on its own motion, may challenge the designation of any document or other information as confidential by motion to the Commission, with reasonable prior notice to the parties and an opportunity for hearing. In considering such motion, the usual burdens of proof and production shall apply and no additional presumption shall be given as a result of Submitting Party's prior designation of material as Confidential Information. In the event the Commission should rule over the objections of a Submitting Party (the party providing the confidential information) that any information should no longer be subject to the protections of this Protective Order, such information shall not be disclosed until the later of five (5) business days after the Commission so orders or, if Submitting Party files within such five day period an interlocutory appeal or request for stay of such order, the date upon which such appeal or request for stay is decided; provided, however, that said periods may be extended in accordance with any stay ordered by the Commission or a reviewing court.

4. Any person provided access to Confidential Information shall review and be bound by the terms of this Protective Order. Prior to obtaining access to any Confidential Information, such person shall sign an acknowledgment of his or her obligation to abide by this Protective Order in the

form attached hereto as Attachment A. A copy of the acknowledgment must be sent promptly to the Submitting Party.

5. The identity and affiliation of independent consultants, experts, or any other person to be provided access to Confidential Information shall be disclosed by Receiving Party to the Submitting Party prior to any such access. Submitting Party shall have the right to refuse to permit the disclosure of Confidential Information to any person who is an officer, director, stockholder, partner, owner, consultant or employee of a competitor of Submitting Party or any of its affiliates, or of an affiliate of such a competitor, except under the terms and conditions as the Commission, upon Motion by any party, may prescribe and as described in Paragraph 6.

6. Unless modified by the Commission, access to Confidential Information shall be limited to counsel for the parties, certain of the party's employees with a need to access such information for purposes of this proceeding, Commission Staff assigned to this proceeding, any independent consultants or experts retained by the parties in connection with this proceeding, and to a stenographer or reporter recording any hearing in connection with the proceeding.

7. No copies of Confidential Information furnished by Submitting Party shall be circulated to persons other than those authorized under paragraph 6 of this Protective Order. Persons authorized under paragraph 6 hereof also may take such notes as may be necessary solely for the purpose of this proceeding. Such notes shall be treated as Confidential Information.

8. The restrictions upon, and obligations accruing to, persons who become subject to this Protective Order shall not apply to any Confidential Information submitted in accordance with this Protective Order if the Commission rules, after reasonable notice and hearing, that such Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of Submitting Party or the Receiving Party.

9. If a party desires to place any Confidential Information in evidence in this proceeding or take any other action which discloses or is likely to disclose any part of the substance of the requested Confidential Information, such Confidential Information shall be reviewed *in camera*. If the information is found to require protection from public disclosure, it shall be placed in the Commission files under seal. Said Confidential Information shall be available only to the Commission, the Hearing Examiner, any party authorized under this Protective Order to have access to Confidential Information, and any members of the Commission Staff assigned to advise and assist the Commission and Hearing Examiner. If necessary for a determination in the proceeding, a non-Confidential summary of the material shall be prepared and placed on the public record.

10. Where reference to Confidential Information is required in pleadings, briefs, other legal documents, or argument, such reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In such circumstances, counsel shall preserve the confidentiality of material in the sealed record. If counsel shall include Confidential Information in pleadings, briefs, other legal documents, or

arguments, that portion of such documents or that portion of the transcript of such argument containing confidential information shall be treated as Confidential Information and filed under seal.

11. Should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with this Protective Order shall be forwarded to the reviewing court in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.

12. This Protective Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Confidential Information produced by Submitting Party or; (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.

13. Confidential Information furnished by Submitting Party pursuant to this Protective Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Protective Order, until this Commission or its authorized presiding officer shall otherwise order.

14. This Protective Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

15. The Parties shall abide by the terms and conditions of any third-party nondisclosure or confidentiality agreement as may pertain to Confidential

Information provided to a Submitting Party, which may become subject to this Protective Order.

16. Within forty (40) days after the Commission reaches a final decision in this proceeding, each party to whom Confidential Information has been provided shall return to Submitting Party such Confidential Information and shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, such Confidential Information except as described in Paragraph 17 below.

17. Copies of Confidential Information, notes, and other materials containing or reflecting, directly or indirectly, the Confidential Information, that are in the possession of Commission members, counsel or employees of the Commission may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the Confidential Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Confidential Information is used. If a Commission member, counsel for employee of the Commission does not retain the Confidential Information, that person shall destroy it as provided in Paragraph 16;

provided, however, that the sealed record shall be retained by the Commission and shall continue to remain subject to the confidentiality requirements of this Protective Order until otherwise modified by the Commission.

BY ORDER OF THE HEARING EXAMINER

Trina M. Bragdon
Hearing Examiner

ATTACHMENT A

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The undersigned is _____ and serves as
(title/job description)
an employee or consultant to _____ in the above-
referenced proceeding before the Maine Public Utilities Commission. In
connection with work to be done in this proceeding I am to be given access to
certain Confidential Information of Submitting Party under the terms and
conditions of a Protective Order, a copy of which has been delivered to me. I
have read the Protective Order and I agree to comply with and be bound by its
terms.

Dated: _____